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Sent: Friday, September 8, 2017 3:30 PM
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Cc: Miles, James; Lott, Don; Brown, Stephanie; Baney, Tony; Presler, Amos; Tierney, Meghan; Price, Michelle; Vizard, Elizabeth; Anderson, Steve
Subject: Extension of the TSCA RRP Micro-business Penalty Pilot and Graduated Penalty Approach
Attachments: LBP GPA Pilot 3-5-17.pdf

Regional TSCA Enforcement and ORC Managers,

This email extends the Region's use of both the Micro-business Penalty Pilot and Graduated Penalty Approach (GPA) Pilots for TSCA RRP cases to **March 31, 2018**. Although the Micro-Business Pilot has been in effect for some time the GPA Pilot is fairly new. The GPA Pilot became effective January 2017, but Regions generally did not begin using it until after March 5, 2017. This extension provides a full year of implementation from the March 5, 2017 memorandum for the Regions to continue to test the GPA Pilot. The extension also provides time to gather information from the Region's experience using the pilots to inform the selection of the better option for the lead-based paint enforcement. Both pilots are available at our new LBP Intranet site:

<http://intranet.epa.gov/oeca/oce/wced/leadbasedpaintreference.html>.

Thank you for your continued feedback on these alternative penalty approaches and for your support for improving the RRP enforcement program. If you have questions, then please feel free to contact Stephanie Brown at brown.stephanie.epa.gov or at 202 564-2596.

Greg

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY - 3 2012

MEMORANDUM

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

SUBJECT: Pilot RRP Penalty Program for Micro-Businesses

FROM: Rosemarie A. Kelley, Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement

TO: Regions 1 – 10

This memorandum transmits a pilot for addressing micro-businesses under the Lead-Based Paint Consolidated Enforcement Response and Penalty Policy (LBP Consolidated ERPP).¹ The lead Renovation, Repair, and Painting (“RRP”) Rule which became effective in April 2010 anticipated that many small businesses would be regulated by the rule. As a result of our initial compliance monitoring efforts, we have confirmed that many of the entities regulated under the RRP Rule are very small businesses that would not likely be able continue to do business and pay the penalties generated under the existing LBP Consolidated ERPP. The goal of this pilot is to allow the regions to assess a penalty under the LBP Consolidated ERPP that results in an appropriate level of deterrence for violating the RRP rule in cases against micro-businesses. All regions may, but are not required to, participate in this pilot. The pilot is applicable to RRP² cases against micro-businesses through Fiscal Year 2012 only.³ OECA will review the results of the pilot through the Nationally Significant Issues process before deciding to continue the pilot, with or without revision, in Fiscal Year 2013 and beyond.

Addition of Micro-Business Penalty Matrices to the ERPP

This memo temporarily adds two new penalty matrices to the current LBP Consolidated ERPP. These matrices are designed to aid in the consistent and fair resolution of RRP cases for respondents with annual sales or gross pre-tax revenue of \$300,000 or less (“micro-businesses”) (see attachment 1). To the extent possible, case teams should use publically available sales information to determine which penalty matrix to apply. Because annual sales information is not always indicative of a micro-business’ actual revenue, if a respondent provides documentation (such as its previous year’s tax return) to show that its annual (pre-adjusted) gross income would qualify it for a lower matrix, the case team may recalculate the penalty using the lower matrix.⁴

¹ Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule (LBP Consolidated ERPP) (August 2010), available at <http://www.epa.gov/compliance/resources/policies/civil/penalty/leadbasedpaint-consolidatederpp0810.pdf>

² If an RRP inspection reveals violations of the Pre-Renovation Education (PRE) Rule, the penalty for the PRE counts may also be calculated using the micro-business penalty matrices, provided the PRE counts are taken in conjunction with RRP counts. The penalty for 1018 violations should be calculated in accordance with the existing Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy.

³ At this time, the pilot does not apply to cases involving training providers.

⁴ For example, if the American Business Directory (ABD) or Dun & Bradstreet (D&B) indicate a respondent’s annual sales are \$250,000, the case team should calculate the penalty using the higher micro-business matrix; however, if during

Please note that although these new matrices are temporary, for purposes of the pilot they should be considered additions to the LBP Consolidated ERPP. All of the general policies and adjustment factors currently set forth in the LBP Consolidated ERPP will continue to apply to micro-businesses. For example, regions should continue to calculate and recover a respondent's economic benefit from non-compliance in addition to the gravity-based penalty. Additionally, as currently provided for in the LBP Consolidated ERPP, penalties may be reduced for various reasons if the case team determines such reductions are appropriate. For example, when appropriate the penalties may be reduced by up to 30% for attitude.

Relationship of the Micro-Business and ESA Pilots

OECA is also working to finalize the LBP Expedited Settlement Agreement (ESA) Pilot. The Micro-Business Pilot and ESA Pilot serve different purposes and, thus, vary in several important aspects. Nonetheless, both pilots are intended to let regions focus greater attention on large and complex RRP enforcement cases.

The Micro-Business Pilot applies only to micro-businesses, but is available for all types of RRP violations (Levels 1-6), including work practice violations. This pilot affects only the gravity penalty calculation aspect of a case, and uses a specifically-designed penalty matrix which takes into account the "extent" and "circumstance" levels of each violation.

By contrast, the LBP ESA Pilot aims to give regions a tool to quickly resolve minor violations (e.g., recordkeeping violations), many of which have resulted from the large volume of tips and complaints received by the regions. The LBP ESA Pilot applies to any size violator, but is available only for identified minor RRP and Disclosure Rule violations (i.e., certain Level 3-4 violations, and most Level 5-6 violations). The LBP ESA Pilot does not apply to work practice violations. The ESA Pilot uses a flat penalty rate (all violations are "minor extent" violations); and provides an expedited (non-negotiated) approach to settlement.

Duration of the Micro-Business Pilot

The Micro-Business pilot may be used on all RRP cases against micro-businesses where initial contact with the respondent (e.g., show cause letter, pre-filing letter, etc.) occurs on or before September 30, 2012.

OECA will assess the results of the Micro-Business pilot as the cases are submitted through the NSI process throughout the remainder of Fiscal Year 2012.

Acknowledgments

I'd like to thank Region 1 for proposing this pilot policy and for working with WCED staff throughout its development. If you have any questions about this micro-business policy, please contact Gregory Sullivan, Branch Chief, at (202) 564-1298 or Erin Saylor, Attorney-Advisor, at (202) 564-6124.

Attachment

negotiations a respondent provides documentation showing its annual gross income is under \$100,000, the case team may recalculate the penalty using the lower micro-business matrix. Similarly, if ABD or D&B indicate a respondent's annual sales are \$800,000, the case team should calculate the penalty using the existing matrix in the ERPP; however, if the respondent produces documentation that indicates its annual gross income falls within one of the micro-business matrices, the case team may recalculate the penalty using the appropriate micro-business penalty matrix.

ATTACHMENT 1

Where Respondent's Annual Sales are \$100,000 or less:

	Major	Significant	Minor
Level 1a	\$ 2,000	\$ 1,500	\$ 750
	\$ 850	\$ 500	\$ 280
Level 2a	\$ 1,600	\$ 1,200	\$ 600
	\$ 600	\$ 420	\$ 170
Level 3a	\$ 1,200	\$ 900	\$ 450
	\$ 450	\$ 330	\$ 150
Level 4a	\$ 800	\$ 600	\$ 300
	\$ 300	\$ 210	\$ 130
Level 5a	\$ 400	\$ 300	\$ 150
	\$ 150	\$ 130	\$ 105
Level 6a	\$ 160	\$ 120	\$ 110
	\$ 120	\$ 110	\$ 100

Where Respondent's Annual Sales are between \$100,001 and \$300,000:

	Major	Significant	Minor
Level 1a	\$ 5,000	\$ 3,400	\$ 1,000
	\$ 2,140	\$ 1,130	\$ 380
Level 2a	\$ 4,000	\$ 2,720	\$ 800
	\$ 1,510	\$ 950	\$ 230
Level 3a	\$ 3,000	\$ 2,040	\$ 600
	\$ 1,130	\$ 760	\$ 140
Level 4a	\$ 2,000	\$ 1,360	\$ 400
	\$ 760	\$ 470	\$ 130
Level 5a	\$ 1,000	\$ 680	\$ 200
	\$ 380	\$ 250	\$ 120
Level 6a	\$ 400	\$ 270	\$ 130
	\$ 190	\$ 130	\$ 100